

PUBLIC DEFENDER COMMISSION MINUTES

April 21st, 2006

Pre-Release Center

1019 N. 15th St.

Great Falls, Montana

Call to Order:

The Public Defender Commission meeting was called to order at 8:45 a.m. by Chairman Jim Taylor.

Commissioners Present:

Betty Bischel, Edgar; Daniel Donovan, Great Falls; Stephen Nardi, Kalispell; James Park Taylor, Pablo; Wendy Holton, Helena; Doug Kaercher, Havre; Jennifer Hensley, Butte; and Tara Veazey, Helena.

Commissioners Absent:

Theda New Breast, Babb; Mike Sherwood, Missoula; Caroline Fleming, Miles City.

Other Interested Parties:

Beth Brenneman, Montana Advocacy Program; Scott Crichton, ACLU; Robin Rowe of ASIME; Brent Doig, Budget Analyst for the Governor's Office, Ed Sheehy, Region 2 Deputy Public Defender and Barb Kain, Human Resource Officer from the Department of Administration.

Correction of Minutes:

On page 4, paragraph 7 of the March 17th minutes, strike "into Flathead".

On page 3, paragraph 4 of the March 16th minutes, change it to read that Commissioner Veazey is on the committee, not that the committee is "headed by" her.

On page 4, paragraph 2 of the March 16th minutes, add the word "be" in between the words will and submitted.

On pages 10 and 11 of the March 17th minutes, where the vote for Regions 2, 3, 4, and 5 are discussed, add that the reason Commissioner Donovan cast the dissenting vote is because the public defender and regional offices would be separate.

Approval of Minutes:

Commissioner Hensley moved to accept the corrected minutes; Commissioner Nardi seconded the motion and the motion carried unanimously.

Chief Hood's Report:

Chief Hood reported that she would finish interviewing for the Regional Deputy Public Defender for Region 1 next Tuesday morning and make a decision that afternoon.

Chief Hood introduced Ed Sheehy as the new Regional Deputy Public Defender for Region 2.

Chief Hood reported that the Regional Deputy Public Defender hired for Region 3 is Kristina Neal from the Appellate Public Defender's Office.

Chief Hood reported that the Regional Deputy Public Defender hired for Region 4 is Jeremy Gersovitz from the Helena Public Defender's Office.

Chief Hood reported that the Regional Deputy Public Defender hired for Region 6 is Dan Boucher a private attorney from Havre.

Chief Hood reported that Douglas Day has been hired as the Regional Public Defender for Region 7. She informed the Commission that he is Judge Phillips law clerk and although he is not experienced, he comes with the strong support of the judge and the local bar. She said that he does have a lot of administrative experience and will begin next week special training by spending two days next week in the Helena public defender's office.

Chief Hood reported that Peter Ohman from the Gallatin County Public Defender's Office has been hired as the Regional Deputy Public Defender for Region 8 and that he comes with strong support from the judges and the local bar.

In Region 5, Chief Hood stated that she will finish interviewing for Butte on Wednesday.

Chief Hood reported that in Billings Carl DeBelly has been hired as the Regional Deputy Public Defender and he comes out of the Yellowstone County Public Defender's office.

She reminded the Commission that they met the Regional Deputy Public Defenders for Regions 10 and 11 at the last meeting and she stated that by Wednesday all Deputy Public Defender positions will be filled.

Chief Hood informed the Commission that for the state office in Butte, Sandra Law has been hired as the Financial Manager; Theron Wilson as the Information Technology Technician; Monique Lary as the Temp/Receptionist and Larry Murphy as the Contract Manager. She also informed them that Larry Murphy will be going to the Courts of Limited Jurisdiction meeting in Missoula.

Chief Hood stated that she is implementing the strategic plan that was adopted at last meeting.

She informed them that in Kalispell we will have permanent space by Oct 1st and that the public defender and regional offices will be together in the same building. Temporary space has been located by July 1st.

Chief Hood is actively looking for office space in Polson.

Chief Hood informed them that in Missoula, the lease has been signed and the regional and public defender offices will be together. Everything will be ready to go on July 3rd and we will be moving them into the new office on Saturday July 1st.

She has finalized the space for the Appellate Public Defender Office and they will stay in the same location.

She stated that in Helena, Butte and Great Falls, negotiations for office space are still ongoing.

Chief Hood informed them that in Bozeman and Billings the regional employees and new expanded employees will be in same building but that we are experiencing some problems with wiring because 60 days notice is needed to be provided to the information technology department in Helena to schedule the wiring of any office.

Chief Hood stated that we are currently negotiating the license for Lexis.

She informed the Commission that with the current offices there are problems every week but that the benefits people from the state will be visiting those offices over the next several weeks. There is a meeting scheduled for the Missoula staff for next week.

Chief Hood told the Commission that there are current vacancies in Billings and Great Falls.

She told the Commission that she will identify the contract people within the next two weeks and then she and Larry Murphy will contact them.

Chief Hood told the Commission that Barb Kain from the Human Resource Department will be talking to them about attorney and staff salaries. She said that there will be a general job posting for attorneys, staff, and investigators all over the state, as well as the law schools and that we will need to hire approximately 45 additional attorneys.

Chief Hood informed the Commission that we are working on employee handbooks.

She also discussed the issue of indigency determination and developing policy.

Chief Hood reported on the meeting that she and Commissioner Veazey had with Dal Smilie an attorney from the Department of Administration, on rulemaking. Mr. Smilie advised them that the standards ought not to be rules; they need to be internal standards. He further advised Chief Hood that rules don't affect the public and that there are three areas to

address: indigency determination, complaint/grievance procedure and contract counsel compensation. Chief Hood told the Commission that they will be receiving assistance from Gretchen in Dal Smilie's office in working on these rules.

Commissioner Donovan asked what a grievance covers. Chief Hood said that she has a grievance policy from Washington State that she will use as the basis for our grievance policies. Commissioner Donovan suggested that the procedure should be to go to the judge if the client doesn't get satisfaction. Commissioner Bichsel asked about the timeline for filing a grievance.

The Commission discussed how to handle the Commission on Practice Complaints. Chairman Taylor reminded the Commission that Steve Bender had previously indicated that Tort Claims would be able to assist on those complaints, but Commissioner Holton pointed out that it would be a conflict of interest since they represent the prosecution also. Eric Olson will address responses to the Commission on Practice in his trainings. Chief Hood stated that it doesn't happen very often that a complaint goes beyond the first level.

Chief Hood updated the Commission on the Union issues. Two Unions filed petitions for elections. The Public Defender is represented by State Labor Relations and they have taken the position that the two Unions have identified the bargaining unit correctly but not the number of positions in the unit.

Robin Rowe of ASIME addressed the Commission and stated that they put in their petition that it will be one unit, not separate. She also informed the Commission that the election has been delayed by the state.

Chairman Taylor said that they should get all public documents directly from Paula Stoll to keep things moving.

Chief Hood asked that the Commission agree to amend Region 9 to increase it by two attorneys. Commissioner Nardi moved to amend Region 9 to reflect the addition of two attorneys. Commissioner Hensley seconded the motion and it carried unanimously.

Chief Hood stated that on Monday she and Harry Freebourn will meet with David Ewer from the Governor's Office to present the strategic plan as approved by the Commission at this meeting.

Chairman Taylor asked Chief Hood if she recommended that the indigency language be stricken from the standards and made a rule. Chief Hood responded that the procedure needs to be flushed out. Commissioner Donovan asked if the financial questionnaire would be part of the rule. Chief Hood stated that if the applicant receives SSI or AFDC then they qualify under the statute. Chairman Taylor stated that we need a form, rules and process and Chief Hood said we should start with the form.

Chairman Taylor asked Chief Hood where we are with the Chief Appellate Defender and Chief Hood responded that she has two people in mind.

Chairman Taylor asked about case management software and Chief Hood stated that we've identified two other packages that are similar to JustWare but that it will be a long process possibly up to another year before a decision is made on whether we will continue with JustWare or purchase another product. Harry Freebourn stated that it's been determined that JustWare is not capable of handling the reporting requirements for Senate Bill 146 but that it may be a good work tool for our attorneys to use on a daily basis to keep track of events related to their cases. However, in its current form the software does not provide costs information by case. Cost information is a major requirement of SB 146. Chairman Taylor suggested that we contact NLADA for assistance on software issues and that we use something that is easy to convert until a decision is made. Commissioner Veazey asked what the timeline is for developing an interim database. Chief Hood stated that Teri Heiland, I.T. Manager for the Office of State Public Defender will begin working on it right away.

Mr. Freebourn stated that we could use existing licenses from JustWare and other offices until we have permanent software. He explained that the main plan to produce SB 146 reporting is to use the state's SABHRS system. Commissioner Hensley asked what it was about JustWare that made us back away. Chief Hood responded that JustWare is primarily a prosecution tool.

Mr. Freebourn stated that we plan to identify our software needs, select software, and deploy it during FY 07. Commissioner Veazey asked if it would have the capacity to check for conflicts. Mr. Freebourn was unsure about this but would check on it. Commissioner Donovan asked if the lawyers would be required to keep track of their time per case. Mr. Freebourn responded that we'll make payroll as easy as possible and that the accountant's position will be to maintain the general ledger and provide financial reporting for SB 146. Mr. Freebourn said that it will be a simple process; we'll get the information from the attorneys and put together a spreadsheet. Chairman Taylor asked how many offices keep track of their time and Chief Hood responded that they all do and they all prepare monthly affidavits. Chairman Taylor asked that a timekeeping form be prepared for the Commission's review at the next meeting.

Training Coordinator's Report:

Eric Olson, Training Coordinator for the Office of State Public Defender informed the Commission that Chief Hood is working very hard.

Mr. Olson reviewed his training schedule with the Commission. He has scheduled a one day conference on April 28th for the Regional Deputies that will cover introduction to finances, a review of the standard and management.

He also told the Commission that there is a two day retreat planned on May 31st and June 1st at Lubrecht Conservatory with a number of out of state speakers for the Regional Deputy Public Defenders and managing attorneys. He also stated that an initial seminar for all salaried attorneys, office managers, paralegals and investigators is scheduled for July 12th through the 14th at MSU in Bozeman.

Mr. Olson suggested that the Commission send a general letter to the current public defender employees to ease the transition and to notify them that Chief Hood's decisions are made with the support of the Commission. Commissioner Hensley asked for examples of where Chief Hood is having problems with this. Chief Hood advised that she has visited some of the offices at least three times to assure people that they are not losing their jobs.

Commissioner Hensley stated that she does not feel comfortable with having the Regional Deputy Public Defenders not being paid for the training

sessions that they would be attending prior to becoming state employees. Chairman Taylor asked Mr. Freebourn if we could shift the funds to allow the eleven Regional Deputies to come into the system before July 1st.

Mr. Freebourn talked about the budget for FY 06. He and Randi have had meetings and other contact with members from the Governor's Budget Office and they are aware that we will have a deficit. Chairman Taylor stated that he was not surprised that they've under funded us.

Brent Doig, Budget Analyst for the Governor's Office, talked about decision packages and he stated that if we live within the budget this year then we will not short ourselves for next year. He further stated that they will do whatever they can to make the program successful and that funds can be transferred from FY 07 to FY 06.

Chairman Taylor stated that we need the eleven Regional Deputies on by the month of June. Brent Doig told the Commission that the Governor's Budget Office has a personal services contingency fund that is available to cover budget shortfalls of this nature. Brent Doig also stated that to put on the 11 regional deputy defenders that this action must be approved by the budget committee.

Mr. Freebourn stated that the a potential shortfall for FY 2006 relates to costs that the Judiciary and other state agencies that include ITSD will bill us for the work that they are doing on our behalf including the installation of IT equipment in our offices. The Judiciary and ITSD are exploring the possibility of billing us next year for services they provide this year.

Chairman Taylor asked if state agencies could be requested not to bill us at all.

Barb Kain, HR Director of the Department of Administration, informed the Commission that her agency is considered a proprietary fund agency and that she and others track their time for the activities that they perform for the public defender office. Therefore the only way that she and others can get paid is to bill others.

Commissioner Nardi moved to amend the System Plan to allow Chief Hood to negotiate and hire Regional Deputies as she sees fit prior to July 1st.

Chairman Taylor stated that the motion couldn't be entertained at this time, and that it would have to be introduced under new business.

Commissioner Nardi stated that the most important thing is to deal with the cases.

Chief Hood stated that the meeting next Friday for the Regional Deputies is very informal, just to introduce them to the things they'll be doing.

10:45 a.m. Harry Freebourn gave a PowerPoint presentation (see Exhibit 1) on the Financial Plan that is included in the Office of the State Public Defender "Presentation of the Strategic Plan to the State Public Defender Commission" dated April 21, 2006 as follows:

- The financial plan begins on page 30 of the Strategic Plan,
- Mr. Freebourn addressed 18 major assumptions used to develop the financial plan. Mr. Freebourn especially emphasized the following assumptions: (1) the plan assumes that there will be "overlapping costs" during FY 2007 because the office expects to hire state FTE to provide defender services but will need to keep certain contract attorneys in place until these FTE are trained and ready to take full caseloads. Also certain cases will remain with contract attorneys to provide continuity to the client, (2) that there is no assumption that recognizes the increase in caseload between FY 2004 and FY 2007 and that funding for the office was provided at FY 2004 case levels.
- Page 37 of the plan identifies that the office expected to be within budget for FY 2006, however, this will not be the case if the Commission decides to bring the regional deputy public defenders on staff before FY 2007. The plan also expects that the agency will experience a deficit of at least \$2.8 million in FY 2007 due to the change in the business plan from that contained in the original fiscal note. This plan expects to have 85.50 more FTE and open 5 new public defender offices than appeared in the fiscal note.
- FY 2008 and FY 2009 amounts are expected to be about \$16.1 million, and \$15.8 million, respectively with 192.75 FTE in each fiscal year. These amounts would be included in the budget submission to the Governor's office for the 2009 biennium.

- Page 38 identifies certain budget items that would be included in other decision packages if the Commission so desires and approves.
- Page 39 of the plan identifies central office costs including those for contract attorney services.
- Page 40 identifies estimated contract attorney services by region.
- Pages 41 through 52 identify specific costs by region and were not discussed in detail.

Commissioner Donovan said that federal agencies are paying \$92/hour for non-capital public defender cases and \$163/hour for capital cases. He recommended that we look for an increase to our contract attorney rates for FY 2008 and beyond.

Chairman Taylor spoke about the budget item for the serious crime unit and asked that Mr. Freebourn find out how the Attorney General provides similar services.

Chairman Taylor asked about the budget item for Native America Case Workers and requested that we increase this item by \$100,000 in each of FY 2008 and FY 2009 to start similar functions in two new regions. It was decided to keep this item funded by federal sources and to change it to general fund if federal grants fail to materialize.

Chairman Taylor talked about putting on the Legislative Agenda an item dealing with the financial impact put on the defense for raising fitness to proceed.

Chief Hood and Eric Olson will present contract conflict manager position at the next meeting.

12:20 Presentation by Barb Kain, Human Resource Officer, and Department of Administration:

Ms. Kain handed out a packet of information (refer to Exhibit 2) regarding salaries for the employees of the public defender's office.

Commissioner Nardi asked about the pay ranges contained within the financial plan. Mr. Freebourn stated that only one of the six counties will be

giving their employees a raise before they become state employees and that the plan includes pay increases for the others, if and only if the Chief decides to provide this increase. Mr. Freebourn also noted that new attorney salaries were budgeted at \$45,000 per year with an additional 15% for benefits, and about \$5,000 per year for health insurance.

Commissioner Nardi expressed concern over the attorney salaries being too low. Chairman Taylor asked how many pay band 6, 7 or 8 employees we would have. Chief Hood will determine which pay band the attorneys will fall into according to their experience.

Chief Hood talked about recruiting and stated that job postings will go into all newspapers in the state, all accredited law schools, all law clerks, the Montana Lawyer and the NLADA.

1:15 P. M. – 1:45 P.M. Tour of the Facility

Legislative Committee Report:

Commissioner Donovan handed out an article on the electronic recording of interrogations (refer to Exhibit 3). Commissioner Hensley stated that she feels Legislators would want to hear from us on this issue and that maybe we could use a prominent prosecutor or the ACLU to bring on this legislation. Chairman Taylor said that the advantage we have as a group is that we can push it, we have the staff and we shouldn't rely on someone else to do it. Chief Hood stated that she asked the Attorney General what his position is and he said he would get back to her after he meets with his legislative committee.

There was discussion about having a policy for support services for indigent defendants represented by private counsel, that they have a right to state paid support services. A privately retained attorney could ask the court for witness fees. Commissioner Donovan thinks this discussion should be tabled until after we're set up and then deal with it on a case by case basis.

There was further discussion about developing policies and procedures regarding case caps.

2:00 P.M. Public Comment:

Beth Brenneman of the Montana Advocacy Program talked about the guardianship statutes and counsel being both the Guardian Ad Litem and the attorney. She suggested excising the Guardian Ad Litem role. She also pointed out that on the Involuntary Commitment of a Person with a Developmental Disability Standards that they do not get an attorney unless they ask for one. She recommended that it be changed to an automatic appointment of an attorney.

Kandi Matthew-Jenkins from Missoula told the Commission that public defenders are not given enough money to bring in their own experts. She also stated that investigators and paralegals are a tremendous help in these cases. She said that her experience with public defenders has been that they are hurtful and arrogant.

Robin Rowe of ASIME talked to the Commission about the petition they filed for an election. She stated that the petition has been delayed because Paula Stoll claims it is premature and should be thrown out. She also said that Matthew Thiel will talk to anyone that has questions about the petition.

Ed Sheehy the new Regional Deputy Public Defender for Region 2 told the Commission that there is a lot of dissension in the Missoula Public Defender's office which is being generated by Margaret Borg. He reported that Ms. Borg told the attorneys not to fill out the Attorney Experience Survey that was requested by Eric Olson.

Mr. Sheehy went on to discuss death penalty work and he recommended that the Commission petition the Montana Supreme Court to change the competency standards. He also talked about compensation for death cases and that he thinks it's imperative that the compensation is changed because there are only eleven qualified attorneys on the list to handle those cases. He stated that many attorneys who are able and capable to handle those types of cases won't do it because of the low compensation.

Mr. Sheehy talked about the standards and how they need to be clarified. He went on to talk about how the current Chief Public Defender in Missoula (Margaret Borg) does not allow calls from the detention center and he has informed the attorneys that he will be taking calls from the detention center.

Scott Crichton of the ACLU expressed concern about people not starting until July 1st. He feels that not only should the Regional Deputies begin work before July 1st but that the state should pay for training. He also thinks that we should talk to Phyllis Subin about the software used for the New Mexico public defender system. He further commended the Commission its development of the standards.

3:00 P.M. Old Business:

Chairman Taylor made the motion that the amendment to Region 9 be adopted to add two additional attorney FTE to the Billings region; give Chief Hood the authority to bring on the Regional Deputy Public Defenders before July 1st, and we'll make the budgetary adjustments to the financial plan so that there are more attorney FTE's in pay band 7 than 8. Commissioner Nardi seconded the motion and it carried unanimously.

New Business:

There was discussion that the legislative package should be submitted to the Governor's Office by next week.

Chairman Taylor moved to include in the legislative package two items requested by Beth Brenneman relating to the attorneys for the developmentally disabled and separating the guardian ad litem roles in guardianships. Ms. Brenneman will provide this information to Harry Freebourn. Commissioner Nardi seconded the motion and it carried unanimously.

Chairman Taylor moved to include the interrogation bill in the legislative package. Commissioner Nardi seconded the motion. Commissioner Hensley questioned saying that she agreed with Chairman Taylor but she thinks that the MTACDL should bring it. Chairman Taylor stated that he wants to move forward and see what the Governor says. Chairman Taylor moved to include the interrogation bill in the legislative package, Commissioner Nardi seconded the motion and it carried unanimously.

Chief Hood informed the Commission that the Law and Justice Committee want to have a joint meeting with the Commission on June 29th

and 30th in Butte. Chairman Taylor said that he could not be there but that Commissioner Nardi can chair the meeting. Chairman Taylor stated that since May 19th won't work for Chief Hood, the Commission could have a meeting on May 15th or vote on the Standards at the May or June meeting and implement them over the next year. The Commission decided that the next meeting would be on Monday, May 15th in Butte.

Chairman Taylor talked about sending the Regional Deputies to the NLADA's training.

3:30 P.M. Standards:

Commissioner Nardi will withdraw his standards on Involuntary Commitment and Developmental Disabled Commitment and replace them with the standards submitted by Beth Brenneman.

Chairman Taylor wants something in writing by the next meeting from the Regional Deputies stating that they've received the standards and also any comments they may have.

5:00 P.M. Meeting Adjourned

Exhibits 1 – 3 have been posted with these minutes to the Office of the State Public Defender website at: <http://www.publicdefender.mt.gov/>